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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1966

No. 77

LAWRENCE LONG,

Petitioner,

vs.

THE DISTRICT COURT OF IOWA, IN AND FOR LEE COUNTY, FORT MADISON, IOWA.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF IOWA

BRIEF FOR PETITIONER

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BRIEF FOR PETITIONER

Opinion Below

The opinion of the District Court of Lee County, Iowa, is found at R 36 and is not officially reported. The order of the Supreme Court of Iowa has not been published in the official reports and is found at R 44.

Concise Statement of Grounds on Which Jurisdiction of Court Invoked

The jurisdiction of this court is invoked under 28 United States Code, Sections 1257 and 2101(c). The date of the order of the Supreme Court of Iowa sought to be reviewed

is May 3, 1965. A petition for certiorari was filed in this case on May 20, 1965.

Constitutional Provisions and Statutes Involved

The Constitution of the United States, Article XIV, Sec. 1: "No state shall make or enforce any law which will abridge the privileges or immunities of the citizens of the United States; nor shall any state deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws".

Article I, Sec. 13, Constitution of the State of Iowa: "The writ of habeas corpus shall not be suspended or refused when application is made as required by law, unless in case of rebellion, or invasion the public safety may require it."

Rules 331(a), 340, Rules of Civil Procedure, Iowa Code (1962). (Text set forth in appendix).

Question Presented for Review

The order granting certiorari stated the question presented for review as follows:

Did the refusal of the state trial court to provide a transcript for the petitioner, solely because state law made no provision for furnishing of a transcript without the payment of a fee, deny the petitioner the opportunity to obtain full appellate review of the trial court's denial of the petitioner's petition for a writ of habeas corpus and thereby deprive the petitioner of the equal protection of the laws?

Statement of the Case

Petitioner was arrested on April 9, 1963, in Mahaska County, Iowa, and charged with larceny. He appeared before the committing magistrate the following day without counsel and a plea of guilty was recorded (R 1). Petitioner thereafter appeared at arraignment in district court and pled not guilty. Not being able to furnish bond, the petitioner was held in custody until trial of the case some six months later.

The district court jury returned a verdict of guilty on the larceny charge and fixed the value of the property allegedly taken, a pump, at $25.00 (R 8). On October 21, 1963, the petitioner was sentenced to be confined at the State Penitentiary at Fort Madison, Iowa, for a term not exceeding five (5) years. He is presently serving this sentence. Petitioner's conviction was affirmed on appeal by the Supreme Court of Iowa in *State* v. *Long*, 130 N.W.2d 663 (Iowa 1964).

Petitioner filed a petition for writ of habeas corpus on January 13, 1965 in the District Court of Iowa, Lee County, this being the county wherein Fort Madison penitentiary is located. Contained in the application were certain grounds contesting the legality of petitioner's restraint, including the denial of counsel at preliminary hearing and lack of speedy trial (R 16). Petitioner further contended that he was denied counsel during police interrogation and that his court appointed attorney was incompetent. The appeal in *State* v. *Long* had dealt with only one aspect of these claims, the right to speedy trial. After an evidentiary hearing, wherein petitioner was not permitted appointed counsel, the Lee County District Court entered an order denying the petition for writ of habeas corpus.

Petitioner next filed a notice of appeal to the Supreme Court of Iowa to obtain review of the lower court's order. In connection therewith he made application to the Lee County District Court for a copy of the hearing transcript, setting forth his inability to pay for same (R 34). The Lee County District Court denied the request in an order dated March 23, 1965 (R 36).

Thereafter petitioner filed a petition for certiorari to the Supreme Court of Iowa contending that the lower court's action in denying the request of an indigent inmate for a transcript was unlawful and in violation of his constitutional rights. On May 3, 1965, the Iowa Supreme Court entered an order summarily denying the application for certiorari (R 44).

A petition for certiorari and a motion for leave to proceed *in forma pauperis* were filed in this Court. On February 28, 1966, this Court granted the motion for leave to proceed *in forma pauperis* and granted certiorari limited to the question of whether the denial of a habeas corpus hearing transcript deprived the petitioner of equal protection of law (R 45).

Summary of Argument

In Iowa, there is no statutory provision which specifically authorizes the furnishing of a trial transcript to an indigent in habeas corpus proceedings. Since no meaningful equivalent is provided, the indigent applicant for habeas corpus is required to pursue an appeal from the lower court's denial of habeas corpus relief without an adequate record. This procedure denies meaningful appellate review to the poor while granting such review to others.

Appeal from a denial of a petition for habeas corpus is a matter of right under Iowa law. The petitioner in the instant case was effectively foreclosed from fully exercising that right because of his financial inability to purchase a stenographic transcript of the habeas corpus proceeding.

The action of the Iowa courts in denying petitioner's application for a transcript is inconsistent with *Lane* v. *Brown*, 372 U.S. 477, *Griffin* v. *Illinois*, 351 U.S. 12, and related cases. *Lane* v. *Brown* makes clear that *Griffin* v. *Illinois* applies in state post-conviction proceedings. Whenever a state affords a direct or collateral remedy to attack a criminal conviction, it cannot invidiously discriminate between rich and poor. An indigent defendant is entitled to an adequate record on appeal from the denial of a petition for writ of habeas corpus.

An indigent defendant is denied equal protection of the law when he is denied an appeal on equal terms with other defendants, solely because of his lack of funds. And this point applies with particular force where the indigent is an applicant for the Great Writ.

ARGUMENT

A. An Appeal in Habeas Corpus Proceedings is a Matter of Right Under Iowa Law.

Habeas corpus is an established method for post-conviction testing of the legality of a prison's restraint under Iowa law. The Constitution of the State of Iowa provides for the writ of habeas corpus. Article I, Sec. 13, Constitution of the State of Iowa. Implementing this right are extensive statutory provisions setting forth procedures to obtain a habeas corpus hearing. Ch. 663, Iowa Code,

1962. Iowa affords a right of appeal to persons aggrieved by denial of a petition for writ of habeas corpus. The matter of appeal is not discretionary in Iowa. As stated in *Waldon* v. *District Court of Lee County,* 130 N.W.2d 728, 731 (Iowa 1964):

> "The writ of habeas corpus is provided for in our constitution, Sec. 13, Art. I:
>
> 'The writ of habeas corpus shall not be suspended, or refused when application is made as required by law, unless in case of rebellion, or invasion the public safety may require it.'
>
> The requirements of law are set forth in chapter 663, Code of Iowa, 1962, I.C.A., and the judgment is appealable to this court as a matter of right. Rule 331, Rules of Civil Procedure, 58 I.C.A. Alberts v. Lainson, 250 Iowa 748, 94 N.W.2d 94."

The petition for writ of habeas corpus was filed in the instant case on January 13, 1965 (R 15) by the petitioner. The legality of his imprisonment had not been adjudged on a prior proceeding of this character. Under the laws of the State of Iowa as set forth above he had a right to review by the Iowa Supreme Court of the lower court's determination concerning the legality of his restraint. This could not be adequately accomplished without providing the prisoner as a minimum with a transcript of the habeas corpus proceedings. Review of habeas corpus judgments are available to all, and those with sufficient funds can obtain meaningful review with the aid of a court reporter's transcript. Where a state grants appellate review it cannot do so in a way that discriminates against indigent defendants on account of their poverty. *Griffin* v. *Illinois,* 351 U.S. 12.

B. There Is No Provision Under Iowa Law Which Specifically Authorizes the Preparation of a Transcript for an Indigent Prisoner Without Cost in Habeas Corpus Proceedings.

The petitioner filed a notice of appeal from the lower court order denying his petition for habeas corpus, and the Supreme Court of Iowa was vested with jurisdiction to review the lower court's judgment. Petitioner further applied for a court reporter's transcript of the proceeding in habeas corpus without payment of costs (R 34). This application was denied by the lower court in an order which recited that there was no provision in the law for the furnishing of a transcript without the payment of fee (R 36).

The Iowa Code provides for the preparation of a transcript without cost to the defendant in a criminal cause where he is indigent. Sec. 793.8, Iowa Code (1962). This section does not set forth its application to habeas corpus proceedings. That the section applies to all indigents on direct appeal was discussed in *Weaver* v. *Herrick*, 140 N.W.2d 178, 180 (Iowa 1966):

> "The matter of appeal by a defendant in a criminal case is not discretionary in Iowa. He may appeal as a matter of right. Section 793.1, Code, 1962, provides that either the defendant or state may appeal.
>
> Rule 16 of this court provides that if a defendant in a criminal case appeals and desires to submit the case upon a printed abstract of the record, brief and argument, he shall follow certain procedures therein set out.
>
> The provisions of this rule, like the right to appeal, is available to all convicted defendants. Printing the

record and necessary briefs costs money. Defendants who are able to pay for such printing are thus assured of a full review on their appeal. To assure an indigent defendant the same rights as are afforded a defendant with means, section 793.8, Code, 1962, provides for furnishing him a transcript at county expense, and section 775.5 as amended by chapter 449, Laws Sixty-first General Assembly, provides for payment of the printing of the trial record and necessary briefs. The alternative of rule 16 is an appeal on a clerk's transcript."

The above case cites with approval the proposition that while a state is not required by the Federal Constitution to provide appellate review, when it does so it may not discriminate against some convicted defendants because of indigency. The principle appears equally applicable to habeas corpus appeals.

The procedures for preparing a habeas corpus appeal are controlled by Rule 331, Rules of Civil Procedure, Iowa Code (1962) and subsequent rules. Rule 331 establishes the right to appeal from all final judgments. Rule 340 governs the record on appeal and provides that the appealing party shall file an abstract of the record and a copy of the court reporter's transcript promptly after taking the appeal. The rule states:

"(a) Promptly after taking an appeal to the supreme court, appellant shall file with the clerk of the trial court duplicate typewritten *abstract* of so much of the record in that court, including pleadings, evidence, rulings, orders, judgment and all proceedings in the case, as is material to the appeal. Where exhibits will be

copied in full in the printed record, the abstract may so state and refer to them by letter, number of other appropriate designation, without copying them.

The reporter's transcript shall be filed at the same time; and these rules relative to it shall also apply to bills of exceptions under rule 241. The cost of the transcript shall be taxed in the trial court.

The clerk shall forthwith notify the attorneys of record for the appellee of such filing."

An alternate method is provided under 340(j), whereby the parties may present an agreed record setting forth so much of the facts pleaded or proved as are necessary to a decision. In either instance, transcript is crucial. Proceeding under Rule 340(a), the petitioner needs a transcript to prepare his abstract, and the rule further provides that a transcript should be filed promptly. Under the alternate method provided by Rule 340(j), it would be well nigh impossible for an indigent without a transcript to set forth the necessary facts. Denying him a transcript forces the indigent to rely on memory, and where several witnesses have testified at the habeas corpus hearing this will be extremely difficult. In addition to the problem of the petitioner being unable to accurately remember the testimony, the other party may be unable or refuse to agree to the record, which agreement is necessary under this rule.

The decision in *Lane* v. *Brown,* 372 U.S. 477, left open the question of what screening procedures might be permissible in post-conviction cases where applicable alike to all petitioners. Such problem is not involved here. There was no screening process used to deny the petitioner the right he sought to enforce. The petitioner was denied a

transcript solely because of his poverty. Such transcript was essential to a meaningfu' appeal. In the Brief for the Respondent in Response to the Petition for a Writ of Certiorari, p. 8, the state comments that a "hearing transcript would no doubt be helpful in most appeals . . . " Indeed, under the Iowa provisions it is critical.

C. Iowa May Not Constitutionally Deny an Indigent Petitioner for Writ of Habeas Corpus a Transcript Necessary for Full Appellate Review.

1. *Lane* v. *Brown.*

In *Lane* v. *Brown,* 372 U.S. 477, the petitioner was convicted of murder and sentenced to death, and the conviction was affirmed on appeal. He then filed a petition for collateral relief. After a hearing on the petition, it was denied. The defendant then applied to the court for a transcript of the hearing in preparation for an appeal from the denial. The rules of the State Supreme Court permitted review but required that a transcript be filed with the Supreme Court. The defendant's request was denied, the state court ruling that only the public defender could procure the transcript. The public defender had previously taken the position that an appeal would be unsuccessful and refused to order the transcript.

The Supreme Court of the United States held that where an appeal is accorded as of right, the exercise of that right cannot be made to depend upon the prisoner's ability to purchase a transcript:

> "The present case falls clearly within the area staked out by the Court's decisions in Griffin, Burns, Smith, and Eskridge. To be sure, this case does not involve, as did Griffin, a direct appeal from a criminal convic-

tion, but Smith makes clear that the Griffin principle also applies to state collateral proceedings, and Burns leaves no doubt that the principle applies even though the State has already provided one review on the merits." 372 U.S. at 484-485.

Rule 2-40 of the Indiana Supreme Court, 1958 Edition, provided that a transcript of so much of the record as was necessary should be filed with the clerk of the Supreme Court within ninety days after the decision of the lower court. In the instant case, Rule 340(a) Iowa Rules of Civil Procedure, provides that a transcript shall be filed by the appealing party promptly after taking an appeal. Under the latter rule the transcript is essential to the presentation of an evidentiary record, and without the record there can be no effective appeal. Under Rule 340 the only provision wherein an appeal record may be prepared without a transcript is Rule 340(j). This requires agreement of the opposing party to the record, which the state may be unwilling or unable to provide. Should agreement be impossible, the petitioner must proceed under Rule 340(a) wherein a transcript is essential. Thus, these provisions of Iowa law appear to leave foreclosure of effective appeal within the discretion of a non-judicial officer, a feature of law clearly prohibited in *Lane* v. *Brown.*

2. *Griffin* v. *Illinois.*

The petitioner in *Griffin* v. *Illinois,* 351 U.S. 12, was convicted of armed robbery in Illinois. He filed a motion requesting that a certified copy of the record, including a transcript of the proceedings be furnished him without cost. He alleged that he was a poor person without funds to acquire a transcript. The Illinois courts denied his mo-

tion, refusing to furnish him with a transcript at public expense. The question presented was whether Illinois could, consistent with the Due Process and Equal Protection Clauses of the 14th Amendment, administer the statute so as to deny adequate appellate review to the poor while granting such review to others. The Supreme Court of the United States held that the defendant must be furnished with a transcript, or an adequate substitute. The opinion states:

> "There is no meaningful distinction between a rule which would deny the poor the right to defend themselves in a trial court and none which effectively denies the poor an adequate appellate review accorded to all who have money enough to pay the costs in advance. It is true that a State is not required by the Federal Constitution to provide appellate courts or a right to appellate review at all. See, e.g., McKane v. Durston, 153 US 684, 687, 688, 38 L ed 867-869, 15 S Ct 913. But that is not to say a State that does grant appellate review can do so in a way that discriminates against some convicted defendants on account of their poverty." 351 U.S. at 18.

The denial of a transcript in the instant case is violative of this principle in that it deprives the petitioner of adequate appellate review based upon ability to pay. That the *Griffin* principle is applicable to habeas corpus proceedings is made clear in *Lane* v. *Brown.*

The state has, in this case, discriminated against the petitioner in not granting his application for a transcript to pursue an appeal from the denial of habeas corpus. This discrimination is founded upon petitioner's indigency—a

discrimination and classification that is clearly against the Equal Protection and Due Process clause of the 14th Amendment. Due to this discrimination, the petitioner is denied the opportunity to have this case heard in an adequate appeal, which opportunity is enjoyed by other petitioners with funds. The court is concerned with the adequacy of appeal in the *Griffin* case. The state there conceded that it is sometimes impossible to prepare an adequate appeal record without a transcript of lower court proceedings. Preparation from memory is not the equivalent of a court reporter's transcript, yet preparation from memory is exactly what the order of March 23, 1965 (R 36) would force petitioner to do in the instant case. This is inconsistent with the principle of the *Griffin* case which states that destitute defendants must be afforded as adequate appellate review as defendants who have money enough to buy transcripts.

3. *Smith* v. *Bennett.*

The question in *Smith* v. *Bennett,* 365 U.S. 708, concerned the validity, under the Equal Protection clause of the 14th Amendment, of the requirement of Iowa law that necessitated the payment of statutory filing fee by an indigent prisoner of the state before an application for a writ of habeas corpus or the allowance of an appeal in such proceedings would be docketed. The court noted that the Great Writ is an available post-conviction remedy in Iowa and held equal protection of the laws prohibited the imposition of financial hurdles as a condition of exercising the right to habeas corpus remedies.

4. *Burns* v. *Ohio.*

In *Burns* v. *Ohio,* 360 U.S. 252, the petitioner was convicted and his conviction was affirmed by the Ohio Court of Appeals. The clerk of the highest court of the state refused to file a motion for leave to appeal from the judgment of the intermediate state court without payment of a $20 docket fee. This Court granted certiorari and the question presented was whether a state may constitutionally require an indigent defendant in a criminal case to pay filing fee before permitting him to file a motion for leave to appeal. The Court held that the state of Ohio could not constitutionally impose financial barriers restricting the availability of appellate review for indigent defendants. It should be noted that the defendant in the *Burns* case had received one review of his conviction and the review he was seeking was a matter of discretion. In the instant case, review is a matter of right.

5. *Eskridge* v. *Washington State Board of Prison Terms and Paroles.*

The *Griffin* rule was applied in *Eskridge* v. *Washington State Board of Prison Terms and Paroles,* 357 U.S. 214, where the court said that a State "denies a constitutional right guaranteed by the Fourteenth Amendment if it allows all convicted defendants to have appellate review except those who cannot afford to pay for the records of their trial". 357 U.S. at 216.

6. *Draper* v. *Washington.*

After conviction in a Washington State Court, the defendants in *Draper* v. *Washington,* 372 U.S. 487, filed timely notices of appeal. They moved the trial judge to order

preparation of a free transcript of the record. The trial judge denied the motions for transcript on the grounds that the assignments of error were frivolous. Defendants sought review in the Supreme Court of Washington, which held the trial court's action to be without error. On certiorari, the Supreme Court of the United States reversed. This Court held that the 14th Amendment was violated by the Washington practice, and the opinion of Mr. Justice Goldberg sets forth the principle applicable to the case at bar:

> "In all cases the duty of the State is to provide the indigent as adequate and effective an appellate review as that given appellants with funds—the State must provide the indigent defendant with means of presenting his contentions to the appellate court which are as good as those available to a nonindigent defendant with similar contentions." 372 U.S. at 496.

The petitioner in the instant case was not provided with as adequate and effective appellate review as that given appellants with funds. The nonindigent defendant could obtain a transcript necessary to meaningful appellate review. No equivalent means are provided for indigent defendants under the Iowa Rules, and no alternate to a transcript was granted this petitioner. The order denying a transcript to petitioner, an indigent prisoner, deprived the petitioner of the right to present his contentions to the appellate court on a basis as good as that available to the nonindigent defendants with similar contentions.

D. The Rule of Lane v. Brown and Related Cases Control the Instant Case.

Lane v. *Brown* makes clear that *Griffin* v. *Illinos* is applicable in state habeas corpus proceedings. A recent state decision refers to the principle that whenever a state affords a collateral remedy to attack a criminal conviction, an indigent applicant is entitled to an adequate record on appeal. In *People* v. *Shipman,* 42 Cal.Rep. 1, 397 P.2d 993 (1965), the petitioner's application for writ of error *coram nobis* was denied. In reversing the order denying *coram nobis,* the Supreme Court of California stated:

> "The Attorney General contends that *coram nobis* is a civil remedy and that therefore appointment of counsel is not mandatory. (See People v. Fowler, 175 Cal.App.2d 808, 810, 346 P.2d 792.) Whatever the label, however, *coram nobis* 'must be regarded as part of the proceedings in the criminal case * * * .' (In re Paiva, 31 Cal.2d 503, 510, 190 P.2d 604, 609), and it is an established remedy for challenging a criminal conviction. (See Id. at p. 505, 190 P.2d 604; In re Horowitz, 33 Cal.2d 534, 537, 203 P.2d 513; 51 Cal.L.Rev. 970, 978.) It is now settled that whenever a state affords a direct or collateral remedy to attack a criminal conviction, it cannot invidiously discriminate between rich and poor. An indigent defendant is entitled to an adequate record on appeal not only from a judgment of conviction (Griffin v. Illinois, 351 U.S. 12, 76 S.Ct. 585, 100 L.Ed. 891; Eskridge v. Washington State Board, 357 U.S. 214, 78 S.Ct. 1061, 2 L.Ed.2d 1269; Draper v. Washington, 372 U.S. 487, 83 S.Ct. 774, 9 L.Ed.2d 899), but from the denial of a petition for a

writ of *coram nobis* (Lane v. Brown, 372 U.S. 477, 83 S.Ct. 768, 9 L.Ed.2d 892; see McCrary v. Indiana, 364 U.S. 277, 80 S.Ct. 1410, 4 L.Ed.2d 1706)." 397 P.2d at 996.

See also *Medberry* v. *Patterson,* 188 F.Supp. 557.

Dismissal of appeal for failure to file a transcript was the question considered in the case of *Daugharty* v. *Gladden,* 257 F.2d 750. Petitioner by motion sought a transcript for appeal from a state habeas corpus proceeding wherein his application for habeas corpus was denied. The Oregon Supreme Court dismissed the appeal upon motion of the attorney general. The petitioner instituted a Federal habeas corpus proceeding. On review thereof the Court of Appeals for the Ninth Circuit stated that the principle of *Griffin* v. *Illinois* applied to habeas corpus proceedings and dictated the result:

> "In Griffin, the question involved the supplying of a required transcript in an appeal from a judgment of conviction, brought to review asserted errors of law committed at the trial. Here the question involves the supplying of a required transcript on appeal in a habeas corpus proceeding, in which it is claimed that there were violations of constitutional rights under the Oregon constitution which rendered the judgment of conviction void.
>
> The Oregon Supreme Court has held that the Griffin rule applies regardless of such a distinction in the nature of the proceedings. In Barber v. Gladden, 210 Or. 46, 298 P.2d 986, 990, 309 P.2d 192, it was held, applying the rule of Griffin, that a statute which requires an applicant for a writ of habeas corpus to file an undertaking on appeal, in order to obtain an appellate

> review, is unconstitutional as applied to an indigent person, thus requiring waiver of the statutory requirement. The principle thus announced, there applied with reference to the supplying of an appeal bond, would seem to have equal application with regard to the furnishing of a required transcript." 257 F.2d 750 at 759-760.

See also *Barber* v. *Gladden,* 210 Or. 46, 298 P.2d 986 (1956); *People* v. *Dean,* 31 Ill.2d 214, 201 N.E.2d 405 (1964).

When the state affords a collateral remedy, an indigent is entitled to an adequate record on appeal from denial of that remedy. The guiding principles set forth in *Lane* v. *Brown* and *Griffin* v. *Illinois* are fully applicable to collateral attack proceedings regardless of the label affixed to the proceeding. *Griffin,* concerning itself with the adequacy of appeal and not necessarily with the so-called access of appellants to appellate courts, strikes down state procedure in which the kind of appeal a man enjoyed depends upon the amount of money he has. The Iowa procedure involved in this case produces exactly that result. The trial court prevents the petitioner from having a stenographic transcript of the proceedings, and no equivalent for presentation is provided. Indeed, the transcript is essential, and its denial is invidious discrimination violative of Due Process and Equal Protection of Law.

Iowa has emphatically recognized that a full stenographic transcript must be provided an indigent defendant on direct appeal to prevent unconstitutional discrimination:

> "To afford an indigent defendant an adequate appeal from his conviction, the furnishing of a transcript, printed record and necessary briefs is required." Weaver v. Herrick, 140 N.W.2d 178, 181 (Iowa 1966).

The above case takes cognizance of the critical necessity of a transcript for meaningful appeal in Iowa. The same reasoning applies with particular force to habeas corpus appeals. "Throughout the centuries the Great Writ has been the shield of personal freedom insuring liberty to persons illegally detained." *Smith* v. *Bennett,* 365 U.S. at 714. It is vital that no applicant for the Great Writ be precluded from its benefit due to lack of funds. As aptly summarized in 51 Iowa Law Review 883, 930:

> "Iowa should, by statute, provide a transcript for indigents in habeas corpus actions. No valid reason exists for furnishing a transcript on the first appeal but not in collateral proceedings. . . . Recently the United States Supreme Court granted certiorari in an Iowa case in which the defendant was refused a transcript in an appeal from the denial of a writ of habeas corpus. Long v. District Court, 86 Sup. Ct. 934 (1966). In light of the Court's handling of an analogous problem in *Lane* v. *Brown,* it seems very possible that Iowa will be directed to furnish a transcript in such situations."

The National Conference of Commissioners on Uniform State Laws has promulgated the Uniform Post-Conviction Procedure Act. 9B Uniform Laws Annotated 352. See also Schaefer, *Federalism and State Criminal Procedure,* 70 Harv. L. Rev. 1, 17. Section 5 of the Uniform Act provided as follows:

> "§ 5. [Proceeding as a Poor Person].—The petition may allege that the petitioner is unable to pay the costs of the proceeding or to employ counsel. If the court is satisfied that the allegation is true, it shall

order that the petitioner proceed as a poor person, and appoint counsel for him. If after judgment, a review is sought by the petitioner, and the hearing court is of the opinion that the review is requested in good faith, and finds that the petitioner is unable to pay the costs of the review, the court shall order that all necessary costs and expenses incident thereto, including all court costs, stenographic services, printing, and reasonable compensation for legal services, be paid by [the county in which the judgment is rendered]."

The newly revised Section 5 provides as follows:

"SECTION 5. [*Inability to Pay Costs.*] If the applicant is unable to pay court costs and expenses of representation, including stenographic, printing, and legal services, these costs and expenses shall be made available to the applicant in the preparation of the application, in the trial court, and on review."

The above section is significant here in its recommendation that review of the lower court's judgment upon stenographic transcript is provided an indigent prisoner within the guidelines of the section. Not only is this desirable, it is constitutionally required under the rule of *Lane* v. *Brown* and related cases.

Conclusion

Meaningful appeal has been denied the petitioner because of his lack of funds to purchase a stenographic transcript of the proceedings in the lower court. The indigent defendant is denied equal protection of the laws under such procedure which discriminates between rich and poor. As stated in *Bandy* v. *United States,* 81 S.Ct. 197, "We have held that an indigent defendant is denied equal protection of the law if he is denied an appeal on equal terms with other defendants, solely because of his indigence." It is submitted that the orders of the District Court of Iowa, Lee County (R 36) and the Supreme Court of Iowa (R 44) are inconsistent with these established principles and should be vacated, and the case remanded so that appropriate orders may be entered ordering petitioner's discharge from custody unless within a reasonable time the State of Iowa provides him with a transcript of his habeas corpus hearing on January 29, 1965.

Respectfully submitted,

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APPENDIX

Section 331(a), Rules of Civil Procedure, Iowa Code (1962):

"All final judgments and decisions of courts of record, and any final adjudication in the trial court under rule 86 involving the merits or materially affecting the final decision, may be appealed to the supreme court, except as provided in this rule and in rule 333. For the purpose of this rule any order granting a new trial (not including an order setting aside a judgment by default other than in actions for divorce or annulment) and any order denying a new trial shall be deemed a final decision. Any order setting aside a default decree of divorce or annulment shall also be deemed a final decision."

Section 340, Rules of Civil Procedure, Iowa Code (1962):

"(a) Promptly after taking an appeal to the supreme court, appellant shall file with the clerk of the trial court duplicate typewritten *abstract* of so much of the record in that court, including pleadings, evidence, rulings, orders, judgment and all proceedings in the case, as is material to the appeal. Where exhibits will be copied in full in the printed record, the abstract may so state and refer to them by letter, number or other appropriate designation, without copying them.

The reporter's transcript shall be filed at the same time; and these rules relative to it shall also apply to bills of exceptions under rule 241. The cost of the transcript shall be taxed in the trial court.

The clerk shall forthwith notify the attorneys of record for the appellee of such filing.

(b) If the abstract does not embrace the whole record, and all evidence and proceedings in the transcript, depositions and exhibits, it shall include a concise state-

ment of all points upon which appellant will rely on the appeal, which shall be limited thereto.

(c) Within twenty days after such filing, or such longer time as the trial court may allow or the parties agree to in writing, any other party to the appeal may, in like manner, file duplicate amendments to appellant's abstract, proposing corrections, substitutions or additions thereto. At the expiration of the time for amendment, either party, on not less than three days written notice, may present the proposed abstract and all such proposed amendments, if any, to the judge before whom the case was tried, who shall settle any differences to the end that the abstract correctly shows the evidence and proceedings at the trial, and is in form as provided by these rules. The trial court shall then append to appellant's proposed abstract an order settling the same with any corrections, substitutions or additions it has allowed in conformity with these rules.

(d) If a party to the appeal shows the trial court a good reason for setting out part of the testimony in question and answer form, such part may appear by questions and answers. If this is not done, testimony of witnesses shall be abstracted in condensed or narrative form.

(e) Formal parts of all exhibits, and more than one copy of any document, shall be omitted. Documents shall be abridged by omitting formal or irrelevant parts. This rule shall also apply to exhibits to pleadings.

(f) The abstract allowed as above or under paragraph (h) hereof shall constitute the record on which the cause shall be submitted on the appeal. The appellant shall cause it to be printed, so as also to contain in full any exhibits designated in the abstract by number alone, as provided in paragraph (a) hereof.

(g) The supreme court may impose or withhold costs for any addition or substitution of irrelevant matter,

or the use of needless questions and answers for the narrative statement. To aid it in this respect only, the clerk of the trial court, at the request of the aggrieved party, shall certify to the supreme court the reporter's transcript, depositions, exhibits and proposed abstract and amendments thereto.

(h) Instead of proceeding under paragraphs (b) and (c) hereof, the parties may file with or include in the abstract proposed by any party to the appeal, their written agreement that it is correct. The trial court shall thereupon certify that such abstract has been so agreed to, and is the record on appeal.

(i) Abstracts and the printed record shall contain a brief index of their contents, in which the pleadings shall appear in the order of their filing.

(j) *Agreed record.* Instead of proceeding under the foregoing paragraphs (a) to (f) the parties may, promptly after taking an appeal, present for his approval to the judge before whom the case was tried, or if he is not available to any other judge of the same court, an agreed record on appeal. It shall show how the questions arose and were decided in the trial court. It shall either set out so much of the facts pleaded or proved as are necessary to a decision of such questions and to proper disposition of the appeal, or contain an abstract of the relevant proceedings which will enable the supreme court to decide the appeal. It shall include an abstract or copy of the judgment or order appealed from and a brief index of contents. Such agreed record, when approved by said judge, shall be the record on appeal and the appellant shall cause it to be printed, filed with the clerk of the trial court and transmitted to the clerk of the supreme court in accordance with rule 342. [Report 1943; amendment 1961; Nov. 20, 1961]"